
Costs Decision

Site visit made on 24 August 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

Costs application in relation to Appeal Ref: APP/R0660/W/21/3273506 39 Elm Drive, Holmes Chapel CW4 7QA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Foden for a partial or full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for partial change of use from residential to a mixed use for residential and childcare on domestic premises.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Parties in planning appeals normally meet their own expenses and the PPG¹ also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonable throughout the planning process. Although, costs can be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in consideration of whether or not costs should be awarded.
4. The applicant contends that the Local Planning Authority (LPA) took 9 months to consider the application and have lost income due to the Planning Committee overturning the Officer's recommendation. The LPA has not responded to the cost application.
5. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. From the evidence before me, it would appear that the LPA determined the application outside of the statutory timescale (8 weeks). Notwithstanding this, no evidence has been provided from either party as to whether a longer period was agreed in writing, so this is inconclusive, and I cannot be certain on this matter. Furthermore, the appeal is not for non-determination, of which the applicant could have exercised their right at that time if the relevant period had expired.

¹ Paragraph: 033 Reference ID: 16-033-20140306; Revision date: 06 03 2014

6. Nonetheless, the application was dated 7 December 2020 and was considered by members at the Southern Planning Committee on 31 March 2021, and a subsequent notice was issued on 1 April 2021. Resulting in some 4 months and not 9 months. Moreover, from the evidence, it would appear that the applicant was aware of the application being brought before the Committee with the reasons for the request set out in the Officer's report. Therefore, it appears to me that there were substantive reasons to justify delaying the determination.
7. In regard to decision making, a Council is not duty bound to follow the advice of its professional officers. However, if a contrary decision is reached the Council should clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. I have no substantive evidence or reasons from the applicant for their assertions. Moreover, the planning cost regime and process is not there for financial gain or to compensate projected annual turnovers.
8. However, it would appear to me from the evidence submitted as part of the appeal, including minutes and the virtual recording (due to the pandemic), of the Southern Planning Committee. Members entered into meaningful discussion and consideration of the case. Having regard to the provisions of the development plan, national planning policy and other material considerations, their conclusion on the change of use was finely balanced. Although, I have reached a different conclusion in my formal decision, it is a case which could have only been resolved by way of an appeal and as such, I find the Council did not act unreasonable in coming to its decision.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that an award for costs is not justified.

KA Taylor

INSPECTOR